

ORIGINAL



0000070286

57

GLIEGE LAW OFFICES, PLLC
P.O. Box 1388
Flagstaff, AZ 86002-1388
(928) 226-8333

RECEIVED

2007 APR -6 A 11:11

John G. Gliege (#003644)
Stephanie J. Gliege (#022465)
Attorneys for the Complainants

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B.
PUGEL, husband and wife as trustees of THE
RAYMOND R. PUGEL and JULIE B. PUGEL
FAMILY TRUST,
and
ROBERT RANDALL and SALLY RANDALL,
husband and wife
Complainants,
v.
PINE WATER COMPANY, an Arizona
Corporation
Respondent..

DOCKET NO. W-03512A-06-0407

RESPONSE TO MOTION TO COMPEL

JOINDER IN REQUEST FOR

PROCEDURAL CONFERENCE

MOTION FOR PROTECTIVE ORDER

W-03512A-06-0407 and W-03512A-06-0613

(consolidated)

ASSET TRUST MANAGEMENT, CORP.
Complainants,
v.
PINE WATER COMPANY, an Arizona
Corporation
Respondent.

DOCKET NO. W-03512A-06 -0613

JAMES HILL and SIOUX HILL, husband and
wife and as trustees of THE HILL FAMILY
TRUST,
Complainants,
v.
PINE WATER COMPANY, an Arizona
Corporation
Respondent.

03512
DOCKET NO. W-~~20511~~A-07-0100

Arizona Corporation Commission

DOCKETED

APR -6 2007

DOCKETED BY

nr

COMES NOW the Complainants, RAYMOND R. PUGEL AND JULIE B. PUGEL, as trustees of THE RAYMOND R. PUGEL and JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL and SALLY RANDALL, and ASSET TRUST MANAGEMENT {hereinafter the "Complainants"} by and through their attorney undersigned and hereby submit their Response to the Motion to Compel, their Joinder in the Motion for a Protective Order and their Motion for a Protective Order.

This pleading is supported by the following Memorandum of Points and Authorities.

Memorandum of Points and Authorities

I. INTRODUCTION

Despite their divergent approaches to the practice of law and the preparation of this case for presentation to the Hearing Officer, counsel for the parties have been in relatively constant communication regarding the discovery issues which have arisen. As this memo will show, there are some fundamental differences of legal opinion between counsel for Pine Water Company and counsel for the Complainants Pugel, Randall and ATM which creates the disputes being presented to the Hearing Officer. It is the position of the Complainants that the nature and the volume of the discovery being propounded upon them is inappropriate and a violation of the applicable *Arizona Rules of Civil Procedure* and further the discovery sought is beyond the ken of the allowable scope of discovery. Despite protestations to that effect by the Complainants, Pine Water Company has taken the steadfast position that it is mandatory that their questions be answered, and if they are not answered in a manner acceptable to Pine Water Company that the answers be modified to fit some preconceived notion or expectation of Pine Water Company.

First, it is of interest that the Motion to Compel Discovery which requests that the Complainants respond to the Fourth and Fifth Sets of Data Requests from Pine Water Company was filed with the Arizona Corporation Commission on March 26, 2007 which was several days before the discovery responses were due and were tendered in this matter. In fact, in light of the responses which were tendered, some of the objections which were set forth very well have become moot, placing Pine Water in the position of causing undue waste of judicial resources and the parties' resources in this matter.

1 Pine Water Company is conducting this litigation with a "heaven or hell" approach. If the
2 Complainants fully comply to the satisfaction of Pine Water Company with all requests and demands
3 made upon them, then things will run smoothly, but if they do not, then the wrath shall be brought down
4 upon them swiftly, even prior to them being obligated to provide responses. The Complainants lawful
5 refusal to participate in this "slash and burn, or take no prisoners" form of litigation has brought them
6 before the Hearing Officer at this point in time. Pine Water Company appears to be taking the approach
7 which was condemned by our Court of Appeals when it stated:

8
9 The causes of counsels' conduct in this action appear to be three
10 fold. First, an erroneous "tradition" exists within some portions of the
11 legal system that the timing of discovery, the content of discovery and
12 disputes about discovery, should, indeed must, be used as a litigation tactic
13 to gain some advantage in litigation. . . . *In re: Daniel J. Radacosky, 183*
14 *Ariz. 531, 905 P.2d 540 (Ct. App. 1995),*

15 As will be later addressed in this Memorandum, the discovery propounded upon and the unreasonable
16 timing demands made upon the Complainants, coupled with an outright refusal to follow the applicable
17 *Arizona Rules of Civil Procedure*, are indicative of an adherence to that no longer held tenant of legal
18 practice.

19 **II. JOINDER IN REQUEST FOR PROCEDURAL CONFERENCE**

20 Counsel for the Complainants would concur that a Procedural conference is in order at this time
21 and would encourage that the same be set for a hearing as soon as possible. In response to the Request,
22 the arguments pertaining to the application of the *Rules of Civil Procedure* to this Proceeding will be
23 addressed in the **Motion for a Protective Order** portion of this memorandum.

24 **III. OPPOSITION TO CHANGING THE FORTHCOMING** 25 **HEARING DATE**

26 Pine Water Company has repeatedly threatened to seek additional time in these proceedings,
27 claiming that it is the conduct of the Complainants which necessitates this request. A closer look at the
28 situation will clearly show that it is Pine Water Company's failure to understand or acknowledge the
29 legal issues which must be presented and resolved that is the problem. Pine Water is seeking to bring in
volumes of extraneous material in an effort to avoid a direct confrontation with the issues as they are to

1 be decided according to *James P. Paul Water Company v. Arizona Corporation Commission*, 137
2 *Ariz. 426, 671 P.2d 404 (S.Ct. 1983)*. This effort to clutter these proceedings with superfluous matters is
3 the reason that they seek delay, and that effort should not be rewarded.

4 **IV. RESPONSE TO MOTION TO COMPEL**

5 **A. Introduction**

6 On March 22, 2007, at almost 4:00PM a letter was emailed from the secretary to Pine Water's
7 Counsel to the undersigned. Attached thereto was the letter dated March 22, 2007 which demanded a
8 response in less than twenty four (24) hours! At the same time the Complainants were working on the
9 answers to the Fourth and Fifth Data Requests which had been propounded. Although those answers
10 were not due until later the next week, this Motion to Compel was filed prior to the time the responses
11 were due. The Complainants were not ignoring Pine Water; they were working on the matters
12 previously tendered by Pine Water Company. To make groundless accusations that the "Complainants"
13 obstinate refusal to respond to PWCo's legitimate discovery requests has regrettably forced PWCo to
14 bring this Motion to Compel" *Motion to Compel Page 2 lines 16 & 17* clearly shows the hand of the
15 Pine Water Company to try to become the victim in this case. This is but one example of the use of the
16 discovery dispute to create chaos in this litigation.

17 **B. Dissection of the Motion**

18 The Motion complains about the objections raised concerning questions to which the objection
19 was raised that it called for a conclusion of law. Complainants do acknowledge the provisions of *Rule*
20 *33, Arizona Rules of Civil Procedure*, which allow for discovery of the Complainants opinions,
21 however that is not what was sought by the questions propounded. In each instance what was sought
22 was a conclusion. Perhaps the problem is in the articulation of the question. Had Pine Water Company
23 wanted the Complainants' opinion they should have asked for it.

24 The next objection raised concerns the Objection to Data Request 4.9. The Complainants did
25 answer the portion of the question identifying the Order, but the Complainants assert the position that
26 their opinion is not the best evidence before the Commission and in fact would not necessarily be
27 admissible evidence. The order is short and to the point. Starting on page 12, lines 25, through page 14
28 line 8 Pine Water Company was ordered to perform certain tasks. It is the Complainants contention that
29

1 they have not performed these tasks. As a result the order also precludes new residential connections as
2 well as main line extensions and commercial connections.

3 Finally the Motion seeks to have the objections regarding the determination of the public interest.
4 This is clearly in the domain of the Commission itself. Everyone may have an opinion as to the public
5 interest, but only the ultimate opinion of the Commission itself will mater in this instance.

6 The Pine Water Company seeks an order that the Complainants respond to the following
7 questions. As the below table, and the copies of the responses to the fourth and fifth data requests,
8 which are attached hereto, indicates, the Complainants did respond to many of the questions.

Question Number	Objection made	Response also submitted
4.1a	Yes	No
4.1b	Yes	No
4.5	Yes	No
4.6	Yes	No
4.9	Yes	Yes
4.11	Yes	Yes
5.4	Yes	Yes
5.5	Yes	Yes
5.10e	Yes	Yes
5.12f	Yes	Yes ¹
5.13	Yes	No

22 Thus in six out of 11, or more than 50% of the questions which Pine Water Company is asking the
23 hearing officer to order a response have been answered, a response has already been provided and no
24 objection received from Pine Water Company. Had Pine Water waited until the responses were received
25 before filing this motion, it could have avoided this unnecessary time to respond to a moot motion as to
26 these points.

27
28
29 ¹ This data request was for a document which was earlier provided in response to the data requests.

1 Turning to the remaining questions, if what Pine Water Company is seeking is the opinion or
2 personal knowledge of the Complainants, upon the tender of a proper question to the Complainants
3 reflecting what is being sought, this too could be answered, but to ask a layperson for all the law
4 pertaining to a certain issue is certainly burdensome, oppressive and an objectionable question.

5 **V. THE NATURE OF THIS PROCEEDING DICTATES THE SCOPE** 6 **OF ALLOWABLE DISCOVERY**

7 The scope of allowable discovery is dependent upon the nature of this proceeding. The
8 Complainants assert that discovery should be related to the issues outlined in *James P. Paul Water*
9 *Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (S.Ct. 1983). Pine Water
10 Company appears to want to extend it further. As the discussion below indicates, this proceeding is a
11 judicial proceeding which carries with it the due process obligations of a fair and impartial hearing not
12 cluttered with extra details which will deter, rather than aid and assist the finder of fact in reaching a
13 conclusion on the appropriate issues which need to be presented.

14 **A. The Nature of the Corporation Commission Action: Legislative** 15 **or Quasi Judicial?**

16 The Arizona Corporation Commission is a creation of the State Constitution. The Commission
17 possesses elements of all three powers of government, legislative, executive and administrative. Its
18 actions at various times fall within these various realms. *See State v. Tucson Gas, Electric Light and*
19 *Power Company*, 15 Ariz. 294, 138 P. 781 (1914). This particular action has arisen pursuant to *Arizona*
20 *Revised Statutes § 40-252* which empowers the commission to amend or alter any order it had
21 previously made. At some time in the past a Certificate of Convenience and Necessity was granted to
22 Pine Water Company, or its predecessors. In granting, or amending a Certificate of Convenience and
23 Necessity, issued pursuant to *Arizona Revised Statutes §40-281*, the Corporation Commission is
24 deemed to be acting in a judicial capacity. *Pacific Greyhound Lines. v. Sun Valley Bus Lines* 70 Ariz.
25 65, 216 P.2d 404 (1950); *Arizona Corporation Commission v. Tucson Insurance and Bonding*
26 *Agency*, 2 Ariz. App. 458, 415 P.2d 472(1966); *Southwest Gas Corporation v. Arizona Corporation*
27 *Commission*, 169 Ariz. 279, 818 P.2d 714 (Ct App. 1991). Because it is sitting in a quasi judicial
28 capacity, the Corporation Commission is bound by the law as set forth by the Courts in this state. *See:*
29 *Cantlay & Tanzola, Inc v. Williams*, 93 Ariz. 365, 380 P.2d 1019 (S.Ct. 1963) Additionally, the

Commission is bound by its own Rules which incorporate the *Arizona Rules of Civil Procedure* into the *Rules of Proceeding before the Commission*.

Because the Commission is acting in a judicial capacity it is bound, by due process considerations, to conducting fair and impartial hearings and reaching fair decisions based upon relevant evidence, not influenced by other matters which in the realm of executive or legislative actions may play a role. *State v. Arizona Corporation Commission*, 143 Ariz. 219, 693 P.2d 362 (Ct. App. 1984) citing *Morgan v. United States*, 298 U.S. 468, 56 S.Ct. 905, 80 L.Ed.2d 1288 (1936). The Complainants argue that this requires due process of law and that the evidence received relates to the issues to be argued to the Commission. cf *Southern Pacific Company v. Arizona Corporation Commission*, 98 Ariz. 339, 404 P.2d 692 (S.Ct. 1965); *Arizona Public Service v. Arizona Corporation Commission*, 155 Ariz. 263, 746 P.2d 4 (Ct. App. 1987).

B. Regulated Monopoly is the Public Policy of Arizona

It is the policy of this state that public service corporations exist in an environment of regulated monopoly. *Arizona Corporation Commission v. Tucson Insurance and Bonding Agency*, 2 Ariz. App. 458, 415 P.2d 472(1966) In exchange for the exclusive right to provide service within a specific geographic area, the public service corporation is subject to regulation by the Arizona Corporation Commission. The Arizona Supreme Court in *Application of Trico Electric Cooperative, Inc v. Senner*, 92 Ariz. 373, 377 P.2d 309 (1962) has noted:

In the performance of its duties with respect to public service **corporations the Commission** acts as an agency of the State. By the issuance of a certificate of convenience and necessity to a public service corporation the State in effect contracts that if the certificate holder will make adequate investment **and render competent and adequate service**, he may have the privilege {Emphasis added}

The granting of a monopoly to a public service corporation is not a matter to be taken lightly. The Arizona Supreme Court has indicated rather that the monopolies are tolerated, as a necessity, to wit:

The monopoly [***5] is tolerated only because it is to be subject to vigilant and continuous regulation by the **Corporation Commission**, and is subject to rescission, alteration or amendment at any time upon proper notice when the public interest would be served by such action. *Davis v. Corporation Commission*, 96 Ariz. 215, 393 P.2d 909 (1964).

1 While as a general rule the adherence to the doctrine of regulated monopoly is good to prevent many of
2 the problems that had arisen prior to its adoption, there are limitations to the applicability of this
3 doctrine.

4 One of the principal cases upon which this doctrine rests, *Arizona Corporation Commission v.*
5 *People's Freight Line*, 41 Ariz. 158, 16 P.2d 420 (1932) clearly expressed this policy when it stated:

6 . . . Many years of bitter experience [***11] have proved beyond a
7 doubt in every line of public service, including that of carriers, that if more
8 than one instrumentality is allowed to operate **when one is amply**
9 **sufficient to meet the public needs**, the actual cost to the public in the
10 long run is not only as a rule greater than it would be with but one plant,
11 but the service is also less satisfactory. Past history has shown that in
12 public service enterprises competition in the end injures rather than helps
the general good and that whether in public or private hands, such utilities
are best conducted under a system of legalized and regulated monopoly.
41 Ariz. At 165 {emphasis added}

13 But the key here are the emphasized words. Regulated monopoly works when one public service
14 corporation is amply sufficient to meet the public needs. But when it is not, this policy in favor of
15 regulated monopoly must be examined! In this case, Pine Water Company is not able to meet the needs
16 of the community. When ordered by this Commission to find "a permanent solution to Pine Water
17 Company's water shortage issues" *Supplemental Opinion and Order on New Service Connection*
18 *Moratorium, Arizona Corporation Commission Decision No 67823*, the Company has failed to do so
19 as witnessed by the implementation of the full moratorium on new connections to the Pine Water
20 system. Thus the company, because it in fact cannot supply adequate water to its service area, which
21 resulted in the Order of the Corporation Commission, Pine Water Company is not "amply sufficient to
22 meet the public needs."² As a result this policy should be discarded in this instance and in looking at the
23 relevant issues in this case the issue of Pine's inability to provide service is tantamount.

24
25
26 ² See Also, *General Order No. A-1, Arizona Corporation Commission as cited in Grand Canyon Airlines, Inc v. Arizona Aviation,*
27 *Inc.*, 12 Ariz. App. 252, 469 P.2d 486 (1970) which states:

28 "SECTION 3. It is hereby declared to be the policy of this Commission . . . ; (4) recognize
29 the public policy of this state as announced by our Supreme Court (*Corp. Comm. v. Peoples*
Freight Line, 41 Ariz. 158, 16 P.2d 420) to be that of **regulated monopoly**, and that competition
should be allowed only when it appears that regulation of the monopoly is insufficient to provide
proper service at a reasonable price;

C. The Issues before the Commission

Pine Water Company has a duty to serve all persons within the area of its Certificate of Convenience and necessity in a non-discriminatory manner.³ *Arizona Revised Statutes § 40-361; Town of Wickenburg v. Sabin*, 68 Ariz. 75, 200 P.2d 342 (1948); *Travaini v. Maricopa County*, 9 Ariz. App. 228, 450 P.2d 1021(1969). The issues before this Commission are clearly set forth in the pleadings. One cannot become involved in a discussion of such issues without first discussing the pivotal Arizona Case on this topic, *James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (S.Ct. 1983). The issue, as stated by the Court is identical to the issue in this matter before the Commission:

The question before the Court is as follows: when may the Arizona **Corporation Commission** ("Commission") delete a portion of the area encompassed in a water company's certificate of convenience and necessity? *Id* 137 Ariz. at 405.

The Court then went on to articulate the test for when a Certificate of Convenience and Necessity may be amended, to wit:

In *Trico* we said a certificate holder was entitled to an opportunity to provide adequate service at a reasonable rate before a portion of its certificate could be deleted. A certificate holder is entitled to that opportunity because providing it with that opportunity serves the public interest. This is necessarily the case in light of Arizona's public policy with respect to public service corporations

Once granted, the certificate confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide adequate service at a reasonable rate. If a certificate of convenience and necessity within our system of **regulated monopoly** means anything, it means that its holder has the right to an opportunity to adequately provide the service it was certified to provide. Only upon a showing that a certificate holder, presented with a demand for service which is reasonable in light of

³ Pine Water Company is under an obligation to provide the same service at the same price to all customers. *Town of Wickenburg v. Sabin*, 68 Ariz. 75, 200 P.2d 342(1948)cited in *Application of Trico*, supra.92 Ariz at 384 *Arizona Revised Statutes § 40-334*. Clearly requiring some customers to dedicate assets of a greater value to Pine Water Company without a full guarantee of repayment violates this concept.

1 projected need, has failed to supply such service at a reasonable cost to
2 customers, can the Commission alter its certificate. Only then would it be
3 in the public interest to do so. . . .

Id 137 *Ariz* at 429

4 So, a reading of this case clearly indicates that the facts which must be presented to the Commission
5 include:

- 6 1. Was Pine Water given an opportunity to provide adequate service at a
7 reasonable rate?
- 8 2. Can Pine Water provide adequate service at reasonable rates?
- 9 3. Was Pine Water presented with a demand for service which was
10 reasonable in light of projected need?
- 11 4. Did Pine Water Company fail to provide such service at a reasonable
12 cost to the Customers?

13
14 The answers to these questions determine whether or not it is in the public interest to delete territory
15 from the Pine Water Company CC&N. All proposed discovery should be evaluated in light of its
16 applicability to these issues or whether it would lead to the discovery of information relevant to these
17 issues. Note that these issues do not prescribe a comparative cost or facilities or personnel evaluation as
18 to varying service providers. These issues solely focus on the capabilities of the Certificate holder.
19 What may occur on the Complainants' property after the deletion from the CC&N is only a matter under
20 the jurisdiction of the Arizona Corporation Commission if once deleted such property is incorporated or
21 attempted to be incorporated into another CC&N, or otherwise violates the laws of the State of Arizona
22 pertaining to the provision of domestic water service on that property.

23 Pine Water Company is trying to approach this case, not in defense of its own inadequate service,
24 but rather by trying to speculate as to what may happen if the properties of the Complainant are deleted
25 from the CC&N. Clearly at this point in time Pine Water Company cannot serve them. So the question
26 then arises as to the relevance of how those properties may be served in the future, whether by an
27 improvement district, a well sharing agreement, or the installation of a myriad of additional wells. How
28 this property may be served water in the future should have little bearing on the question of whether or
29 not the public interest is presently being served. This is not the same as the *Corporation Commission v.*

1 *Arizona Water Company, 111 Ariz 74, 523 P.2d 505 (S.Ct. 1974)* case where a property owner was
2 attempting to delete property from the CC&N of a public service corporation which had adequate wells,
3 infrastructure and a sound operating water system. In such a case the public interest was clearly served
4 by not allowing the deletion; but lacking that factual setting, this is truly a “horse of a different color”
5 and should be treated differently by the Commission.

6 In the process of making the determination as to whether or not the territory should be deleted, it
7 is the obligation of the Commission to determine from the facts whether or not the public interest would
8 be served by the deletion of the territory from the CC&N. *Arizona Corporation Commission v. Arizona*
9 *Water Company, 111 Ariz. 74, 523 P.2d 505 (S.Ct. 1974)*. The relevant facts underlying the position of
10 each party as to whether or not the public interest may be served are discoverable. The determination as
11 to what the public interest is or may be is not a fact in the possession of any party, but rather is a
12 determination made by the Commission.

13 **D. Scope and Parameters of Allowable Discovery**

14 Because of the judicial nature of this process, and the fact that *Section 14-3-101A Arizona*
15 *Administrative Code* incorporates the *Arizona Rules of Civil Procedure*, the scope and parameters of
16 allowable discovery must be determined in accordance with those rules. *Rule 26(b)(1)* clearly provides
17 the limits that discovery must be relevant to the subject matter involved in the pending action. It must be
18 relative to the issues set forth in *James P. Paul Water Company v. Arizona Corporation Commission,*
19 *137 Ariz. 426, 671 P.2d 404 (S.Ct. 1983)* in this case. Further the parameters of allowable discovery are
20 limited by *Rules 33.1, 34, and 36* concerning the volume or magnitude of allowable discovery.

21 Pine Water Company has a duty to its customers to provide service at the most reasonable rates
22 possible ensuring for itself a fair rate of return. In this action before the Commission Pine Water is
23 taking an intransigent position that they must try to protect this portion of their CC&N at all costs, All
24 Costs which will later in a rate proceeding be passed onto their rate payers. In light of the fact that Pine
25 Water lacks both facilities within the areas proposed for deletion and the water supply necessary to serve
26 in these areas, consideration must be given to the costs expended by Pine Water Company in attempting
27 to save an area which they cannot serve. Allowing an unlimited ramping up of fees and costs in
28 discovery disputes which may in and of themselves have more of the characteristics of a mirage is
29 certainly not in the best interest of Pine Water Company.

VI. MOTION FOR A PROTECTIVE ORDER

A. Introduction

Although both parties have diligently worked to resolve the discovery issues in this matter, the Complainants request that the avowals of counsel made by each parties in their pleadings concerning the Motion to Compel and this Motion for a Protective Order constitute the Parties Certification that they have attempted in good faith to resolve the discovery difficulties they are having.

The Complainants now move for a Protective Order precluding them from having to provide any further or supplemental response to the questions hereinbelow identified, and that they do not have to respond to the Sixth Data Request of Pine Water Company absent an order from the hearing officer to respond to all or a portion thereof. The Complainants assert the position that the following questions lie beyond the Scope of legitimate discovery in this matter, and further that the number of questions propounded have exceeded the limitations set forth in the applicable Rules of Civil Procedure, and thus request a protective order precluding the propounding of any further discovery without an order of the Hearing Officer issued after hearing and good cause shown, and further allowing the Complainants not to have to answer the following questions nor supplement any answers already made thereto on the grounds that the questions are beyond the scope of discovery allowed in this matter: 1) Questions 4.5, 4.6, 5.4, 5.5, 5.12a-g, 5.13, 5.15; and 2) all of the Sixth Data Request because the same falls beyond the scope of discovery and exceeds the limitations under applicable rules, and further direct that any further discovery be subject to the terms and provisions of the *Arizona Rules of Civil Procedure* providing for discovery limitations.

Since February 23, 2007, Pine Water Company has propounded at least Ninety Four (94) interrogatories, Forty Six (46) Requests to Produce and Thirteen Requests to Admit on the Complainants, each with their exceptionally short turn around, or response time as prescribed by the Procedural Order. They have sought discovery of not only what the Complainants know, but also what their experts know. They have sought documentation in the possession of the Complainants, which is truly discoverable, and they have sought discovery of documentation not in the possession of the Complainants with the implication that the Complainants had better go and get the information or documents or Pine would be filing to extend the time of the scheduled hearing. Further Pine Water

1 Company has sought discovery about many items which are not within the scope of the issues which are
2 presented to the Commission by this action. A review of the questions listed above, all of which are
3 attached hereto with the Responses which have been given, shows very quickly that they

4 When the Complainants have sought relief they have been met with things such as premature
5 filing of a Motion to Compel. They have been met with email responses from Pine Water Company's
6 counsel, to wit:

7 I am not responding to this email which seeks, not to resolve, but only to attach blame and
8 complain about the burdens of the litigation you have initiated. Email of March 29, 2007
9 from Jay Shapiro

10 Thus, absent an order of the ACC to the contrary, we will expect Complainants to adhere
11 to the deadlines set forth herein, which deadlines have been agreed to and established in
12 this consolidated docket. Email of March 26, 2007 from Jay Shapiro

13 If you do not agree to answer I am filing motion to compel and asking to reset all
14 deadlines. Email of March 22, 2007 from Jay Shapiro

15 But let me try one more time to be clear--your clients will not get out of the CC&N short
16 of a non appealable final court order. Don't mistake my style as you see it, or our
17 inability to get along for a lack of condor. Email of March 20, 2007 from Jay Shapiro

18 Although demanding strict compliance with the schedule set forth in the Procedural Orders in this
19 matter, Pine Water Company, without citation of law or authority, refuses to comply with the limitations
20 on discovery set forth in the *Arizona Rules of Civil Procedure*. Much of the discovery sought by the
21 Pine Water Company is outside the scope of the issues which are being litigated in this matter. As
22 discussed above, discovery is to be limited to that which is relevant to the proceedings. One merely has
23 to look at the variety of duplicitous questions being asked to see that they are beyond the scope of
24 allowable discovery in this matter and further that they are repetitive, argumentative, and not designed to
25 lead to the discovery of relevant information in this matter. Instead they appear to be designed to have
26 the Complainants waste their resources doing work which the Pine Water Company should be doing
27 itself, or chasing information which is not relevant to the issues in this proceeding.

28 Pursuant to §14-3-101A *Arizona Administrative Code*, these proceedings are governed by the
29 *Arizona Rules of Civil Procedure*. Pursuant to Rule 33.1 A Pine Water is limited to 40 interrogatories;
to Rule 34 B requests for ten distinct items or categories of items; and pursuant to Rule 36(b) twenty five
requests to admit. The volume of discovery submitted by Pine Water Company to date in the areas of
interrogatories and Requests to Produce vastly exceed the limitations set forth by applicable Rule. Pine

1 Water has made no effort to comply with the terms and conditions of such rules and request leave of the
2 hearing officer to serve additional discovery.

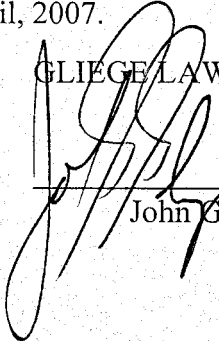
3 The Comments of the Court to the 1991 Amendments to the *Rules of Civil Procedure*, which
4 amendments imposed some reasonable limitations on discovery indicate that the rules were put into
5 place to reduce abuse and delay in civil litigation and further the costs of civil litigation. In this case
6 those newer rules are being honored by being ignored by Pine Water Company.

7 **VII. CONCLUSION**

8 Wherefore, having responded to the Motion to Compel Discovery of the Pine Water Company,
9 and joining in the Request for a Procedural Conference, and filing its own Motion for a Protective Order
10 regarding discovery limitations and the maintenance of the scope of discovery within allowable
11 boundaries, it is respectfully requested that the Hearing Officer set the Procedural Hearing and upon
12 conclusion of the same deny the Motion to Compel and Grant the Motion of the Complainants for a
13 Protective Order.

14 Respectfully submitted this 2nd day of April, 2007.

15 GLIEGE LAW OFFICES P.L.L.C.

16
17 
18 _____
19 John G. Gliege
20
21
22
23
24
25
26
27
28
29

1 Original and 17 Copies of the foregoing
2 Mailed/delivered this 2nd day of April, 2007 to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7 Copies of the foregoing mailed/delivered
8 This 2nd day of April, 2007 to:

9 Kevin O. Torrey
10 Attorney, Legal Division
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, AZ 85007
14 ktorrey@azcc.gov

15 Jay L. Shapiro
16 Fennemore Craig
17 3003 North Central Ave. Ste 2600
18 Phoenix, AZ 85012-2913
19 JSHAPIRO@fclaw.com

20 David W. Davis, ESQ.
21 Turley, Swan & Childers, P.C.
22 3101 N. Central, Suite 1300
23 Phoenix, AZ 85012-2643
24 ddavis@tsc-law.com

1 **GLIEGE LAW OFFICES, PLLC**
2 **P.O. Box 1388**
3 **Flagstaff, AZ 86002-1388**
4 **(928) 226-8333**

5 **John G. Gliege (#003644)**
6 **Stephanie J. Gliege (#022465)**
7 **Attorneys for the Complainants**

COPY

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 **RAYMOND R. PUGEL AND JULIE B.**
10 **PUGEL, husband and wife as trustees of THE**
11 **RAYMOND R. PUGEL and JULIE B. PUGEL**
12 **FAMILY TRUST,**
13 **and**
14 **ROBERT RANDALL and SALLY RANDALL,**
15 **husband and wife**
16 **Complainants,**
17 **v.**
18 **PINE WATER COMPANY, an Arizona**
19 **Corporation**
20 **Respondent..**

DOCKET NO. W-03512A-06-0407

RESPONSE TO FOURTH SET OF DATA
REQUESTS

FROM PINE WATER COMPANY

TO PUGEL ET AL. and ATM

W-03512A-06-0407 and W-03512A-06-0613

(consolidated)

21 **ASSET TRUST MANAGEMENT, CORP.**
22 **Complainants,**

DOCKET NO. W-03512A-06 -0613

23 **v.**
24 **PINE WATER COMPANY, an Arizona**
25 **Corporation**
26 **Respondent.**

DOCKET NO. W-20511A-07-0100

1 4.1 In response to Company data request 2.7, Complainants state that the Company cannot "provide
2 a 100 year adequacy or adequate flow for fire protection." Regarding this claim, please

- 3 a. Identify all rules, regulations, statutes or other laws or orders that require Company to
4 provide a 100-year adequacy for development within its CC&N.
5

6 **OBJECTION: CALLS FOR A CONCLUSION OF LAW.**

- 7 b. Identify all rules, regulations, statutes or other laws or orders that require Company to
8 provide "adequate fire protection" for development within its CC&N.
9

10 **OBJECTION: CALLS FOR A CONCLUSION OF LAW**

- 11 c. State whether a 100-year water adequacy required for development of any of the
12 Complainants' properties?

13 **ANSWER: Although at the present time the showing of a 100 year water adequacy may**
14 **not be legally required, it is in the interest of maintaining the value of the**
15 **Complainants property to be able to show that it is served by a water supply with a**
16 **100 year adequacy. Further, by the time this matter comes before the Commission**
17 **for hearing that situation is likely to change. There are presently two bills pending**
18 **in the legislature, House Bill 2693 and Senate Bill 1575 which address this issue and**
19 **which place the counties and cities and towns outside of Active Management Areas**
20 **in a position where they can require the demonstration of 100 year adequacy of**
21 **water supply prior to the approval of any new subdivision of property. Each bill**
22 **has passed its respective house of introduction and is presently in an Engrossed**
23 **form. This response regarding these bills will be supplemented as they proceed**
24 **through the legislature.**

- 25 d. Identify any public service corporations known to Complainants that provide applicants
26 for an extension of water utility service a 100-year adequacy statement?

27 **ANSWER; The Complainants have not conducted an investigation into what other public**
28 **service corporations are doing. As to whether or not the same is required in an**
29 **Active Management Area, that would call for a conclusion of law and to that extent**
30 **the Complainants object to this question.**

- 31 e. Identify any public service corporations known to Complainants that provide applicants
32 for an extension of water utility service an assurance of fire flow protection?

33 **ANSWER; The Complainants have not conducted an investigation into what other public**
34 **service corporations are doing.**

4.2 Please explain the basis for Complainants' claim in response to Company data request 2.7 that Company has "inadequate storage".

ANSWER: Periodically the company has run out of water and has had to rely upon its Curtailment Tariffs and also it has to truck water to the community to meet the demand for water. The varying seasonal demand causes water shortages in the community. If the Company had sufficient water storage to absorb the peak seasonal demand without interrupting regular and ordinary service it would not have to resort to its Curtailment Tariffs and to hauling water.

4.3 Is it Complainants' position that their properties, now or when developed, should not be subject to conservation requirements such as the Curtailment Tariff in effect in Company's CC&N?

ANSWER: If the Complainants property is still within the CC&N, even though they supplied sufficient water for their property they would still be subject to the Curtailment Tariff. Additionally, all water they supplied would be absorbed into the Company's water supply to be distributed throughout the community thus they could also be subject to water shortages or pressure shortages. It is the Complainant's position that if their property was no longer within the CC&N they would not be subject to the Curtailment Tariff and they would receive full access to all the water they have and they would not be subject to the inadequate supplies of the Company and the Curtailment Tariff.

4.4 Admit that in response to Complainants' Request for Admission No. 19, the Company offered ATM a will serve letter similar to that already offered to Complainants Pugel and Randall.

ANSWER: The Company, through its attorney, offered to the attorney for ATM, but did not provide a "will serve letter" to ATM, and since no letter was provided, it is not possible to know the contents of said letter.

4.5 Complainants repeatedly refer to Company's inability to deliver water at "reasonable rates". What constitutes "reasonable rates"?

OBJECTION: CALLS FOR A CONCLUSION OF LAW.

4.6 Should Company's existing ratepayers have to pay a return on and of plant built solely to serve the extension of service to one or more of the Complainants' properties?

OBJECTION: CALLS FOR A CONCLUSION OF LAW

4.7 Has Company ever stated, represented or required that Complainants construct plant before Company was granted a variance to the Commission's prohibition on new connections and main extensions?

ANSWER: Unknown to the Complainants what the Company has stated.

1 4.8 Please identify the two deep wells referred to in Complainants' response to Company data
2 request 2.14 and provide documentation supporting Complainants' claims regarding the success
3 of these two well projects.

4 **ANSWER: The two wells are the SH3 well and the Milk Ranch LLC Well. The**
5 **documentation concerning the success of the SH3 well is on file at the Arizona Department**
6 **of Water Resources and readily available to the Company. The documentation on the Milk**
7 **Ranch LLC Well has previously been provided to the Company.**

8 4.9 In response to Company data request 2.15, Complainants' reference an unidentified Commission
9 order. Please identify the order referred to and the portions of the order that Complainants
10 contend direct Company to take action that has not been taken.

11 **ANSWER: The Order referenced is Decision No. 67823 in Docket W-03512A-03-0279.**
12 **OBJECT TO THE QUESTION, THE ORDER SPEAKS FOR ITSELF.**

13 4.10 Please explain what a "realtor and sand and gravel provider" accomplished in 2 years that
14 Company has not accomplished in 11 years as claimed in response to Company data request 2.15.

15 **ANSWER: Drilled a deep well which produces a substantial supply of water.**

16 4.11 Please identify all applicable rules and regulations or industry standards concerning the amount
17 storage the Company should have in its water system.

18 **ANSWER: OBJECT TO THE QUESTION TO THE EXTENT IT REQUIRES**
19 **CONCLUSIONS OF LAW. The amount of storage should be determined by an**
20 **appropriate engineer, not by the Complainants. The Complainants are aware that the**
21 **Company sold a storage tank which has been refurbished by the County, but that his not**
22 **central to the issues in this case.**

23 4.12 How could the Company develop its CAP water allocation to augment water supplies in its
24 CC&N as alleged by Complainants in response to Company data request 2.17.

25 **ANSWER: There have been a number of alternative uses of CAP water allocations in**
26 **Arizona. Since the Complainants are not the owners of the allocation, nor authorized to**
27 **use it, it would be a waste of the complainants resources to attempt to determine such a**
28 **beneficial use. That is the Company's job.**

1 Copies of the foregoing mailed/delivered
2 This 29th day of March, 2007 to:

3 Kevin O. Torrey
4 Attorney, Legal Division
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, AZ 85007
8 ktorrey@azcc.gov

9 Jay L. Shapiro
10 Fennemore Craig
11 3003 North Central Ave. Ste 2600
12 Phoenix, AZ 85012-2913
13 JSHAPIRO@fclaw.com
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 GLIEGE LAW OFFICES, PLLC
2 P.O. Box 1388
3 Flagstaff, AZ 86002-1388
4 (928) 226-8333

5 John G. Gliege (#003644)
6 Stephanie J. Gliege (#022465)
7 Attorneys for the Complainants

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B.
PUGEL, husband and wife as trustees of THE
RAYMOND R. PUGEL and JULIE B. PUGEL
FAMILY TRUST,
and
ROBERT RANDALL and SALLY RANDALL,
husband and wife
Complainants,

v.

PINE WATER COMPANY, an Arizona
Corporation
Respondent..

ASSET TRUST MANAGEMENT, CORP.
Complainants,

v.

PINE WATER COMPANY, an Arizona
Corporation
Respondent.

DOCKET NO. W-03512A-06-0407

RESPONSE TO FIFTH SET OF DATA
REQUESTS

FROM PINE WATER COMPANY

TO PUGEL ET AL. and ATM

W-03512A-06-0407 and W-03512A-06-0613

(consolidated)

DOCKET NO. W-03512A-06 -0613

DOCKET NO. W-20511A-07-0100

1 The Complainants hereby respond to the Fifth Data Requests of Pine Water Company. These responses
2 are submitted under the following objection that the same are to discovery in excess of the limits
3 imposed by the Applicable Rules of Procedure. Pursuant to §14-3-101A *Arizona Administrative Code*,
4 these proceedings are governed by the *Arizona Rules of Civil Procedure*. Pursuant to Rule 33.1 A you
5 are limited to 40 interrogatories; to Rule 34 B requests for ten distinct items or categories of items; and
6 pursuant to Rule 36(b) twenty five requests to admit. The volume of discovery submitted by Pine Water
7 Company to date in the areas of interrogatories and Requests to Produce vastly exceeds the limitations
8 set forth by applicable Rule. Without waiving its rights under this objection the Complainants have
9 submitted the foregoing, however are placing the Pine Water Company on notice that henceforth, absent
10 an order from the Hearing Officer obtained in the manner set forth in the applicable rules, no further
11 responses shall be forthcoming until such order is presented.

12
13 **RESPONSES TO FIFTH SET OF DATA REQUESTS**

14 **FROM PINE WATER COMPANY**

15 **TO RAYMOND R. PUGEL AND JULIE B. PUGEL**

16 **AND ROBERT RANDALL AND SALLY RANDALL**

17 **and**

18 **ASSET TRUST MANAGEMENT, CORP.**

19 **W-03512A-06-0407 and W-03512A-06-0613 (consolidated)**

20
21 5.1. How will wastewater collection and treatment, electric, gas, telecommunications and other utility
22 services be provided for Complainants' properties?

23 **ANSWER: By the appropriate public entity responsible for providing such service. The ATM**
24 **Eagle Glen (EG) Town homes project already has all the above utilities in place to the lots for the**
25 **projected final phase of 43 town houses.**

1 5.2. Regarding the response to data request 5.1, will Complainants pay any costs for wastewater
2 collection and treatment infrastructure or infrastructure associated with the extension of any other
3 utility service to Complainants' properties?

4 **ANSWER: It is unknown if the Complainants Pugel or Randall will pay such costs at this time.**
5 **They have laid conduit for APS. All costs have been paid for the ATM project.**

6 5.3. Admit that the none of the Complainants have received development plan approval since 1986.

7 **ANSWER: For ATM the approval received in 1986 is still valid and current. Gila County has the**
8 **approved plan for the EG project dating back to 1986 with the most recent building inspection of**
9 **the EG project occurring in 1994. ATM purchased the Eagle Glen project in 1992. It consisted of**
10 **13 town houses, a clubhouse, and 43 lots with the off-site utilities to each lot (see 5.1). This**
11 **included the complete water main and water delivery system to each lot and each existing**
12 **townhouse. The 13 purchased townhouses were not completely built. ATM received building**
13 **permits from Gila County to complete the 13 town houses and certificates of occupancy were**
14 **granted by the end of 1994 as the units were completed. At that time, E & R Water connected the**
15 **meters to the existing EG water pipes and supplied the water. All further development had been**
16 **on-hold pending a solution to acquiring water service for the final 43 townhouses.**

17 **For the Pugel and Randall Property until the issue of provision of water service is resolved,**
18 **the property owners do not want to speculate on the proposed development, only to be denied the**
19 **right to develop because of the lack of water. Mr. Pugel has received preliminary approval for the**
20 **condos, the RV Park and the Storage facility. The Storage Facility has been constructed because**
21 **it does not require any water hook ups.**

22 5.4. How does development of an RV Park benefit the public interest?
23

24 **OBJECT TO THE QUESTION: CALLS FOR A CONCLUSION OF LAW.**

25 **Without waiving the objection, the Complainants Pugel and Randall incorporate the response to**
26 **question 5.5 below and further assert that organized, planned economic development in the**
27 **Community of Pine is of benefit to the citizens of Pine and Gila County and the State of Arizona.**
28 **The lack of ability to develop property because of the inability to obtain adequate water service**
29

1 can be detrimental to the Community of Pine and to Gila County, Arizona and the State of
2 Arizona.

3
4 5.5. How does development of a multi-unit residential dwelling development (i.e., a Town Home or
5 Condominium) benefit the public interest?

6 **OBJECT TO THE QUESTION: CALLS FOR A CONCLUSION OF LAW.** Without waiving the
7 objection, the Complainant ATM alleges that the facts in support of a finding of benefit to the
8 public interest would include, but not be limited to: The addition of the 43 ATM townhouses will
9 positively benefit the tax base for Gila County. These monies are used to fund the school, library,
10 and the fire department to name a few areas. The tax monies would also help fund the PSWID
11 and their efforts to insure water for the community of Pine. Some of the 43 townhouses would
12 also be owned by full time resident families with children that would be attending the Pine school
13 and would help reverse a declining enrolment situation. The area commerce would also benefit
14 from the larger customer base.

15 5.6. How does either development identified in response to data requests 5.5 and 5.6 promote the
16 sustained use of water supplies in the Pine, Arizona area?

17 **ANSWER:** The use of water within the Pine Community can contribute to a sustained water
18 supply because the source of water is groundwater, and once used it is returned to the ground.
19 This returned water, when augmented by natural recharge, allows for the continued use of the
20 water within the community. The Complainants development will not export water out of the
21 community.
22

23 5.7. Admit that Complainants intend to make a profit on the development of their property.
24

25 **ANSWER:** The Complainants hope to make a profit on the development of their property. The
26 Complainants are taking large financial risks to make a profit on the development of their
27 property.
28
29

1 5.8. What return on investment do Complainants stand to make from the planned development of
2 their properties to an RV Park, a 40-unit condominium project, and a 43-unit Town Home
3 Development?

4 **ANSWER: The rate of return which the Complainants may make is unknown at this time.**
5 **Without adequate domestic water service the return, if any, upon the investment in the property**
6 **would be minimal. It is pure speculation as to what the ultimate profit on any of these projects**
7 **may be.**

8 5.9. In his direct testimony at page 3, Mr. Pugel expresses a belief that the Milk Ranch Well has
9 sufficient water to allow for development of his property. Regarding such testimony, please
10 explain

11 a. The meaning of the terms "sufficient water".

12 **ANSWER: Given the rate of production of the well previously disclosed, and the estimated usage**
13 **of water for the proposed development of the property it appears that the amount of water**
14 **available from the well is greater than the amount needed for future uses. Unlike Pine Water**
15 **Company, Mr. Pugel does not believe that he will run out of water and have to resort to trucking**
16 **water into the community as does the present water supplier.**

17
18 b. The basis for this testimony based on the witness's own personal knowledge and
19 information.

20 **ANSWER: This information was provided by Mr. Pugel who is one of the principals in Milk**
21 **Ranch LLC. As such he personally has information concerning the production of the well and the**
22 **potential use of water. Further he was informed by Mr. Ploughe that there was plenty of water**
23 **for the Developments.**

24
25 5.10. In his direct testimony at page 3-4, Mr. Pugel testifies that Pine Water Company is requiring him
26 to "give" the Company water and a well and infrastructure. With respect to such testimony

27 a. Does "give" mean provide, at no cost, free of charge, with no obligation of repayment? If
28 not, what is meant by the term?
29

1 **ANSWER:** As of this date the information possessed by Mr. Pugel indicates that 1) Pine Water
2 **Company cannot provide water service to his property. See letter attached to Complaint. 2) In**
3 **the Will Serve letter, from Jay Shapiro to John G. Gliege dated October 25, 2006, it states that**
4 **“any unpaid balance remaining at the end of the refund term will be non-refundable.” So it is**
5 **anticipated by Pine Water Company, that some, if not all, of the assets advanced or conveyed to**
6 **the Pine Water Company will be free of charge with no obligation of repayment.**

- 7
8 b. What is the basis for Mr. Pugel’s testimony that he is required to “give” water, a well and
9 infrastructure to the Company?

10 **ANSWER: The “will serve” letter.**

- 11
12 c. Admit that the Company has offered to negotiate an extension agreement with Mr. Pugel
13 pursuant to AAC R14-2-406.

14 **ANSWER: Deny. The Will Serve letter does not comply with the requirements of AAC**
15 **R14020406.**

- 16 d. Admit that the Company has informed Mr. Pugel that infrastructure he would be required
17 to convey and/or finance would be treated as either an advance or a contribution in aid of
18 construction.

19 **ANSWER: Deny**

- 20
21 e. Admit that advances in aid of construction are refundable.

22 **OBJECT TO THE QUESTION: CALLS FOR A CONCLUSION OF LAW. Pursuant to AAC**
23 **R14-2-406 there are limitations on the refunding of advances in aid of construction.**

24
25 5.11. When did Mr. Pugel or his spouse, or any entity they control or own, in whole or in part, acquire
26 the property or properties that are the subject of this proceeding?

27 **ANSWER: Although this is public information readily available, in the interest of being**
28 **cooperative we can inform you that Parcels 301 19 019x and y were purchased on 11/21/05 and**
29 **Parcel 301 26 075 was purchased 9/7/2001.**

1 5.12. With respect to SH3, LLC, please

- 2 a. Identify the ownership of this entity.

3
4 **ANSWER: SH3 LLC is an entity owned by its members, Loren Peterson and Diane Peterson.**
5 **Please note that this information is readily available on the Arizona Corporation Commission**
6 **Web Site.**

- 7 b. Identify all water sources owned by this entity, including Maps and ADWR Well
8 Registration Nos.

9 **OBJECT TO THE QUESTION, THIS INFORMATION NOT IN POSSESSION OF THE**
10 **COMPLAINANT, NOR READILTY AVAILABLE TO THE COMPLAINANT AND IS**
11 **BEYOND THE SCOPE OF REASONABLE DISCOVERY**

- 12 c. How much water has each well owned by SH3 LLC produced in each of the past three
13 years.

14 **OBJECT TO THE QUESTION, THIS INFORMATION NOT IN POSSESSION OF THE**
15 **COMPLAINANT, NOR READILTY AVAILABLE TO THE COMPLAINANT AND IS**
16 **BEYOND THE SCOPE OF REASONABLE DISCOVERY**

- 17
18 d. How many customers does SH3 LLC provide water to?

19 **OBJECT TO THE QUESTION, THIS INFORMATION NOT IN POSSESSION OF THE**
20 **COMPLAINANT, NOR READILTY AVAILABLE TO THE COMPLAINANT AND IS**
21 **BEYOND THE SCOPE OF REASONABLE DISCOVERY**

- 22
23 e. How much water was used by SH3 LLC's customers as identified in response to the prior
24 data request?

25 **OBJECT TO THE QUESTION, THIS INFORMATION NOT IN POSSESSION OF THE**
26 **COMPLAINANT, NOR READILTY AVAILABLE TO THE COMPLAINANT AND IS**
27 **BEYOND THE SCOPE OF REASONABLE DISCOVERY**

- 1 f. Provide copies of all contracts and other documents related to an agreement to purchase
2 water between SH3 LLC and ATM.

3 **OBJECTION TO THE QUESTION, THIS DOCUMENT WAS ALREADY PROVIDED.**

- 4
5 g. Provide copies of all information in Complainants' possession regarding the hydrology,
6 drilling, and production of the SH3 LLC wells that will be used to serve ATM's
7 development.

8 **ANSWER: The Complainants do not have such documents.**

- 9 5.13. Admit that SH3 LLC is neither a public service corporation regulated by the Arizona Corporation
10 Commission nor a political subdivision of the State of Arizona.

11 **OBJECT TO THE QUESTION CALLS FOR A CONCLUSION OF LAW.**

- 12
13 5.14. In his direct testimony at page 3, Mr. Moriarity expresses a belief that SH3 LLC has sufficient
14 water to allow for development of ATM's property. Regarding such testimony, please explain

- 15 a. The meaning of the terms "sufficient water".

16 **ANSWER: The Agreement calls for up to 3,923,750 gallons of water per year. That constitutes**
17 **sufficient water for the development. Sufficient water" is defined as the supply of water matching**
18 **the Arizona Department of Environmental Quality standard of water usage in Arizona – 150**
19 **gallons per day per household ATM has specified the 150 gallons per day per household as a**
20 **standard for the 43 units realizing that not all the 43 units would be full-time families.**

- 21
22 b. The basis for this testimony based on the witness's own personal knowledge and
23 information.

24 **ANSWER: The witness negotiated this agreement with SH3LLC, the managers of which assured**
25 **him that they had the water available to provide it to ATM for this development. Mr. Moriarity**
26 **has seen a copy of the 100-year adequacy rating for the SH3 well. Mr. Moriarity also has seen the**
27 **information from Mr. Mike Ploughe's assessment of the SH3 well that is included in the discovery**
28 **for this case.**

1 5.15. Please provide a copy of the 100 year adequacy supply determination made by ADWQ, or any
2 other agency of the State of Arizona for the SH3 Well as testified to by Mr. Moriarity.

3
4 **OBJECT TO THE QUESTION, THIS INFORMATION NOT IN POSSESSION OF THE**
5 **COMPLAINANT, NOR READILTY AVAILABLE TO THE COMPLAINANT AND IS**
6 **BEYOND THE SCOPE OF REASONABLE DISCOVERY. Without waiving this objection the**
7 **Complainants will state that the information is readily available on the ACC website, docket No.**
8 **W-03512A-03-0279 - the on-going complaint case against the Pine Water Co., anyone can find this**
9 **reference from Harry Jones dated 3/31/2006 for the 100-year adequacy determination for the SH3**
10 **Well and the letter of notification from Frank Putman.**

11 5.16. Please provide all data, information and explanation to support Mr. Moriarity's testimony (direct
12 testimony at 3) that the SH3 Well has "a solid history of surplus".

13 **ANSWER: The SH3 Well can produce enough water to provide for those presently**
14 **receiving water from it and still have more than the almost 4,000,000 gallons per year**
15 **available to sell to the ATM project. Mr. Moriarity has seen a copy of the 100-year**
16 **adequacy rating for the SH3 well. Mr. Moriarity also has seen the information from Mr.**
17 **Mike Ploughe's assessment of the SH3 well that is included in the discovery for this case.**
18 **Mr. Moriarity has been told that the SH3 well pumped to fill a pond two summers ago at**
19 **no cost that became a source of water for the area forest fire fighting and this action had no**
20 **impact on the customer base for the SH3 well.**

21 5.17. Please provide a resume or CV for Michael Ploughe.

22 **ANSWER: It is attached**

23 5.18. Has Mr. Ploughe previously testified before the Commission? If so, please identify the case,
24 decision or docket number.

25 **ANSWER: Mr. Ploughe has testified before the Hearing officer of the Commission in matters**
26 **pertaining to Pine Water Company, more particularly the most recent rate case proceedings.**

27
28 5.19. Has Mr. Ploughe previously testified in any other legal proceedings not identified in response to
29 the previous data request? If so, please identify such proceedings and provide copies of such
testimony.

1 **ANSWER: NONE**

2
3 5.20. In his testimony Mr. Ploughe states that he has prepared numerous reports on the topic of the
4 domestic water situation in Pine, Arizona. Please provide copies of every such report Mr. Plough
5 prepared, as well as copies of any reports prepared by others that Mr. Ploughe has relied upon in
6 rendering opinions on the domestic water supply situation in Pine, Arizona.

7 **ANSWER: The documents requested are submitted herewith.**

8 5.21. Mr. Ploughe testifies that the SH3 Well is close enough to the Pine Water system to make
9 connection in a "cost efficient manner". Please explain the bases for Mr. Ploughe's testimony,
10 including a showing of the relative location of the Company's existing facilities, the point of
11 interconnection and provide a copy of the engineering, design and facilities cost estimates that
12 form the bases for his testimony.

13 **ANSWER: There is a distribution line in the street immediately across from SH3. Pine Water**
14 **Company was going to use this line to connect the SH3 well to the Pine Water Company system,**
15 **however, their negotiations with the owners of SH3 failed.**

16 5.22. Mr. Ploughe testifies that the Milk Ranch Well is close enough to the Pine Water system to make
17 connection in a "cost efficient manner". Please explain the bases for Mr. Ploughe's testimony,
18 including a showing of the relative location of the Company's existing facilities, the point of
19 interconnection and provide a copy of the engineering, design and facilities cost estimates that
20 form the bases for his testimony.

21 **ANSWER: The main line is clearly within close proximity to the Milk Ranch well. Mr. Ploughe**
22 **went back to the exposed part of the main (in the Pine Creek channel) and collected additional**
23 **photos of that. It appears to be a 3" riser with a 4" valve and "blow off" at the base. The main**
24 **must be either a 4" or 6" in diameter. In one of the photos taken at this exposed pipe section you**
25 **can see Rays well, in the distance and through the trees.**

26 5.23. Admit that the only basis identified by Complainants for Pine Water Company being unable to
27 serve their properties is the moratoria currently in effect pursuant to Commission Decision No.
28 67823.

29 **ANSWER: Deny**

1 5.24. Do the Randalls have any plans for development of their properties that are subject to this
2 proceeding? If yes, please provide all information regarding development of such property,
3 including water use, to the extent such plans differ from those testified to by Mr. Pugel.

4 **ANSWER: Other than some preliminary discussions concerning the development of a car wash**
5 **which would recycle water, there are no definite plans.**

6 In Addition, attached hereto are documents requested above.
7

8 Copies of the foregoing mailed/delivered
9 This 29th day of March, 2007 to:

10 Kevin O. Torrey
11 Attorney, Legal Division
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007
ktorrey@azcc.gov

15 Jay L. Shapiro
16 Fennemore Craig
17 3003 North Central Ave. Ste 2600
18 Phoenix, AZ 85012-2913
JSHAPIRO@fclaw.com
19
20
21
22
23
24
25
26
27
28
29

SIXTH SET OF DATA REQUESTS
FROM PINE WATER COMPANY
TO RAYMOND R. PUGEL AND JULIE B. PUGEL
AND ROBERT RANDALL AND SALLY RANDALL
and
ASSET TRUST MANAGEMENT, CORP.
W-03512A-06-0407 and W-03512A-06-0613 (consolidated)

March 26, 2007

- COPY
- 6.1. Is it Complainants' position that Pine Water Company must find additional water supplies to serve customers at any cost?
 - 6.2. Please provide a copy of the development plan referred to on page 3 of the direct testimony of Mr. Moriarity.
 - 6.3. Please provide the cost of drilling and equipping the Milk Ranch Well and please provide documentation supporting such costs. If Complainants believe all documents responsive to this question have already been provided, please specify which documents previously provided apply.
 - 6.4. Please provide information, test results, and/or documentation regarding the determination of the long-term yield of the Milk Ranch well beyond the tested rate. If Complainants believe all documents responsive to this question have already been provided, please specify which document previously provided applies.
 - 6.5. Regarding the facilities referred to in Mr. Ploughe's direct testimony (at p. 4) as being within close proximity (30 feet) of the Milk Ranch Well, please
 - a. Provide any maps or diagrams or other documents in Complainants' possession showing the location of the Milk Ranch Well in relation to the facilities referred to in Mr. Ploughe's direct testimony.
 - b. State the actual location, size and configuration of the facilities referred to in Mr. Ploughe's testimony.
 - c. State the estimated size and capacity of the facilities that will be needed to interconnect the Milk Ranch Well to Pine Water's system.
 - d. State the estimated size and capacity of the facilities that will be needed to interconnect the SH3 well to Pine Water's system.
 - e. State a basis or bases for believing any such facilities are owned, controlled, or operated by Pine Water Company.
 - f. State the basis for believing that any such facilities represent a source of distribution that is properly sized, possesses the proper pressure capability, and is mechanically reliable to act as a source of distribution for any high capacity water distribution lines.

- g. State the basis for believing that any such facilities are, or are not, directly connected to main piping or water storage facilities of any water system in Pine, Arizona.
- 6.6. If granted deletion from Company's CC&N, will ATM be providing "domestic water service" to ATM's property as such term is used in Mr. Moriarity's direct testimony (at p. 2)?
- 6.7. If ATM will not be providing domestic water service to its property, what person or entity will be providing such service?
- 6.8. If ATM will be providing domestic water service to its property following deletion from Company's CC&N, will water purchased under the Water Purchase Agreement between ATM and SH3 LLC be the sole source of water supply? If not, please identify all other supplies.
- 6.9. Concerning the Water Purchase Agreement between ATM and SH3 LLC, please state, explain or identify:
 - a. The persons and/or properties to which ATM, as Water Distributor, will distribute water purchased under the Water Purchase Agreement.
 - b. The water utility service provider that will serve the water.
 - c. How the cost of water under the Water Supply Agreement was determined?
 - d. How it was determined that 326,980 gallons of water per month would be sufficient to serve the persons and properties identified in response to data request 6.9 (a)?
 - e. Who will finance Water Distributor's water system?
 - f. Who will own and operate Water Distributor's water system?
 - g. What experience does ATM have operating a water system?
 - h. What experience does ATM have testing water supplies for compliance with applicable federal, state and local laws and regulations?
 - i. What experience does ATM have installing and/or operating backflow prevention devices?
 - j. What assurance does ATM have that it will be provided water in an amount sufficient to meet the demand of its planned development?
 - k. How will the rates for water provided by ATM as Water Distributor be determined?
 - l. What provisions have been made by ATM for water supplies should SH3 LLC terminate the Water Purchase Agreement in accordance with Section 10.C?
 - m. What public water system authority does SH3 LLC have to provide water to others?

- 6.10. Admit that Complainants do not have information regarding current or historical water production from the SH3 LLC well.
- 6.11. Admit that Complainants do not have information from which it can be determined that the SH3 LLC well has sufficient water supply to serve ATM's planned development.
- 6.12. Regarding the Milk Ranch Well, please
- a. Provide the identification of the well driller(s) providing services at the Milk Ranch well.
 - b. Other than the drilling contractor(s) identified in 6.12 (a) above, what other drilling contractors were considered to provide drilling services for the Milk Ranch well?
 - c. What basis was used for choosing the well drilling contractor(s) identified in 6.12(a)?
 - d. Please provide copies of all well driller logs from the drilling at the Milk Ranch Well.
- 6.13. Please provide a copy of the "main extension" referred to in Mr. Moriarity's direct testimony (at p. 2).
- 6.14. With regard to ATM's proposed water connection to SH3 LLC, please provide all documents related to the water system interconnection between the two water systems or properties, including, without limitation:
- a. Map indicating the point of interconnection.
 - b. Routing of water system piping interconnection between SH3 LLC and ATM.
 - c. Size of piping to be interconnected.
 - d. Engineering analysis indicating the properly calculated size of interconnected piping between the water systems.
 - e. ATM's authority, if any, to operate a water distribution system in a public right-of-way or Gila County road within the ATM property.
 - f. SH3 LLC's authority, if any, to operate a water distribution system in a public right-of-way or Gila County road outside of the SH3 LLC property.
 - g. Copies of the required Gila County Franchise Agreement to install, operate, maintain, and repair public water system distribution lines within the ATM property or outside the ATM property connected from SH3 LLC property.
 - h. Any documents related to SH3 LLC's or ATM's application for a Gila County Franchise Agreement to install, operate, maintain, or repair public water distribution lines within the ATM property or between the ATM and SH3 LLC properties.

- 6.15. Admit that Complainants have neither begun, nor completed, the process of obtaining a Gila County Franchise Agreement for installation, maintenance, and operation of a public water distribution system between the SH3 LLC and ATM properties.
- 6.16. When did ATM acquire the Eagle Glen project and property?
- 6.17. Admit that during some of the time the Eagle Glen project and property were owned by ATM, the Commission permitted the installation of up to twenty-five (25) water meters per month.
- 6.18. Did ATM ever attempt to place its name on the PWCo meter waiting list?
- 6.19. With regard to the Milk Ranch well, please provide, with specificity, and provide all supporting documentation:
- a. The deep water source of supply of the Milk Ranch well.
 - b. Any analysis or conclusion as to the down stream aquifer water rights or claims holders that might be adversely affected by extended use of the Milk Ranch well.
 - c. Any analysis as to what extent and why such down stream aquifer water rights or claims holders may, or may not, be adversely affected by the use of the Milk Ranch well.
 - d. Identify all down stream aquifer water rights or claim holders from which the Milk Ranch well might divert water.
 - e. Proof that the deep water source of the Milk Ranch well will support the long term projected demand of the Milk Ranch well without adverse effect.
- 6.20. Admit that the deep water source of the Milk Ranch well is not connected to an aquifer that might drain into Fossil Springs.
- 6.21. Have Complainants discussed the use of the Milk Ranch well with the U.S. Forest Service Tonto National Forest, U.S. Forest Service Coconino National Forest, Salt River Project, or any other third parties? If so, please provide copies of all communication, if any, and indicate the result of such communication.